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this Memorandum Decision shall not be
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collateral estoppel, or the law of the case.**

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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF H.L.N.

ROBERT E. CHAMBERS,

Appellant,

vs.

REBECCA J. SCHOOLEY,

Appellee.

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No. 32A01-0703-JV-144

APPEAL FROM THE HENDRICKS CIRCUIT COURT
The Honorable Jeffrey V. Boles, Judge
Cause No. 32C01-0601-JP-3

July 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

¹ Counsel entered a limited appearance for the sole purpose of receiving notices of all proceedings regarding the appeal.

Case Summary

Robert E. Chambers appeals the trial court's denial of his request for parenting time. We remand for the trial court to clarify its findings.

Issues

Chambers raises four issues on appeal, which we consolidate and re-state as follows:

- (1) Whether the trial court abused its discretion in denying Chambers' request for the appointment of a guardian ad litem; and
- (2) Whether the trial court's decision was supported by either of the specific findings required by statute.

Facts and Procedural History

H.L.N. was born on October 28, 1998. In 1999, Chambers was sentenced to sixty-five years in prison, and he is still incarcerated. Chambers v. State, 734 N.E.2d 578 (Ind. 2000). Later in 1999, the Hendricks Circuit Court granted custody of H.L.N. to Rebecca J. Schooley, her maternal grandmother. H.L.N. has resided continuously with Schooley since she was six months old. Pursuant to the stipulation of Chambers and Schooley, the trial court established his paternity in 2006.

In prior litigation, Chambers sought visitation with H.L.N. for Chambers' mother. This Court affirmed the trial court's denial of his petition, concluding pursuant to Indiana's Grandparent Visitation Statute that Chambers lacked standing to file such an action. In re H.L.N., No. 32A05-0605-JV-267, slip op. (Ind. Ct. App. Sept. 14, 2006) (citing Ind. Code § 31-17-5-3 (2004)), trans. denied. In denying transfer, our Supreme Court noted the basis for this Court's decision and held that Chambers was not precluded from bringing the instant action for parenting time. In re H.L.N., No. 32A05-0605-JV-267, slip op. (Ind. Nov. 29

2006).

In this case, Chambers seeks parenting time every other Saturday from 7:00 a.m. to 7:00 p.m. In so doing, he moved for the appointment of a special advocate or guardian ad litem for H.L.N. Pursuant to the trial court's direction, Chambers and Schooley submitted affidavits. The trial court denied Chambers' motion for guardian ad litem and his request for parenting time. Chambers now appeals.

Discussion and Decision

While Schooley has entered an appearance for the limited purpose of receiving notices regarding this appeal, she has not submitted an appellee's brief. When an appellee fails to file a response brief, we need not develop her arguments. Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006). We will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error. Id. "Prima facie error in this context is defined as, 'at first sight, on first appearance, or on the face of it.'" Id. (quoting Santana v. Santana, 708 N.E.2d 886, 887 (Ind. Ct. App. 1999)). We will affirm where the appellant is unable to meet this burden. Id.

I. Denial of Appointment of Guardian Ad Litem

For reasons noted below, we are remanding this case for the trial court's further consideration. Nonetheless, we address the trial court's denial of Chambers' request for the appointment of a guardian ad litem as the issue is likely to recur upon remand.

Chambers argues that the trial court abused its discretion in denying his motion for the appointment of a guardian ad litem. In support, he cites Indiana Code Section 31-17-6-1, which provides that a trial court "may appoint a guardian ad litem, a court appointed special

advocate, or both, for a child at any time.” Chambers notes correctly that the statute places the decision within the trial court’s discretion. See K.S. v. State, 849 N.E.2d 538, 543 (Ind. 2006); In re B.C.S., 793 N.E.2d 1054, 1060 (Ind. Ct. App. 2003). The purpose of such an appointment is to protect the best interests of the child. Ind. Code § 31-17-6-3.

There is no dispute that Schooley has had custody of H.L.N. since 1999. Furthermore, the trial court relied explicitly on affidavits submitted by a social worker and H.L.N.’s counselor. The trial court did not abuse its discretion in refusing Chambers’ request for the appointment of a guardian ad litem.

II. Parenting Time

On appeal, Chambers argues that the trial court’s decision to deny his request for parenting time was not supported by either of the findings required by statute. We agree.

“A parent not granted custody of the child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child’s physical health or significantly impair the child’s emotional development.” Ind. Code § 31-17-4-1(a). Accordingly, where a trial court denies a noncustodial parent’s request for parenting time, it must have found either that such parenting time “might endanger the child’s physical health,” or alternatively, that such would “significantly impair the child’s emotional development.” Id. Here, the trial court ordered, “based upon the Affidavits submitted in this case, The Court must DENY Robert E. Chambers’ request to have court-compelled visitation with him.” Appendix at 8. The trial court made neither finding necessary to support its decision. We therefore remand this matter to the trial court so that it may clarify its decision.

Conclusion

The trial court did not abuse its discretion in denying Chambers' motion for the appointment of a guardian ad litem. However, the trial court's order was not supported by either of the findings required by statute for such a decision.

Remanded.

BAKER, C.J., and VAIDIK, J., concur.